

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Lowell Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

October 27, 1981

You represent a paint distributor who sells paint to an automobile body shop for use in the repair of damaged motor vehicles. You inquire whether the distributor may accept an exempt purchaser certificate (Form ST-5) in lieu of collecting a sales tax on its sales of paint to the body shop for such purposes.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts. "Sales at retail" do not include sales for resale in the regular course of business (G.L. c. 64H, s. 1(13)).

Section 1(13)(c) of Chapter 64H excludes from the definition of "sale at retail"

"personal service transactions which involve no sale or which involve sales as inconsequential elements for which no separate charges are made."

Sales and Use Tax Regulation 64H.03 explains the application of the Massachusetts sales and use taxes to service enterprises. It provides in Subsection (2) that a service transaction is not subject to the sales tax where:

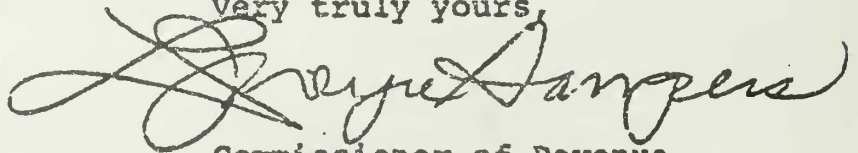
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- (1) The real object of the transaction is the service itself, and no transfer of tangible personal property occurs; or
- (2) The real object of the transaction is the service itself, and an inconsequential transfer of tangible personal property occurs, and the service enterprise does not separately state the purchase price of the property on the bill to the customer.

Based on the foregoing, it is ruled that the automobile body shop is the consumer of paint that it purchases for use in the repair of motor vehicles; the paint distributor must collect the sales tax on its sales of paint to the body shop for such purposes.

Form ST-5, the exempt purchaser certificate, is used in the case of sales to a purchaser which is exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code. It may not be accepted by the distributor in lieu of collecting the tax on its sales to the automobile body shop of paint for use in the repair of motor vehicles. Likewise, since the body shop will not resell the paint or use it for a purpose that exempts its purchase from the tax, the distributor may not accept a resale certificate (Form ST-4) or an exempt use certificate (Form ST-12) in lieu of collecting the tax.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Royce J. Dangers", written in a cursive style.

Commissioner of Revenue

LJH:JXD:mf

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